BAIL SLIP

Appellant viz. Babu (Accused No.1 in S.C.No.17 of 1993 on the file of the Additional Sessions Judge, Tiruvannamalai) was directed to be released on bail in and by the order of this Court dated 6.11.2000 and made in Crl.M.P.No.7532 of 2000 in Crl.A.No.424 of 1999.

Appellant viz. Devagi (Accused No.2 in S.C.No.17 of 1993 on the file of the Additional Sessions Judge, Tiruvannamalai) was directed to be released on bail in and by the order of this Court dated 28.8.2000 and made in Crl.M.P.No.4956 of 2000 in Crl.A.No.424 of 1999.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.07.2005

Coram :

THE HONOURABLE MR.JUSTICE N.DHINAKAR

and

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

Criminal Appeal No.424 of 1999

1.Babu
2.Devagi Appellants/Accused 1 and 2

v.

State, represented by
Inspector of Police,
Kalambur Police Station. Respondent

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment dated 25.03.1999 made in Sessions Case No.17 of 1993 on the file of the Additional Sessions Judge, Thiruvannamalai.

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For Appellants : Mr.V.Gopinath,
Senior Counsel, for
Mr.K.Sevarangan for A1
Mr.S.Sivakumaran for A2

For Respondent : Mr.S.Jayakumar,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by
M.CHOCKALINGAM, J.)

This appeal has been brought forth by the appellants who are two in number. They stood charged, were tried and found guilty for the offences punishable under Sections 364, 302 and 201 of the Indian Penal Code and were awarded life imprisonment for the offence punishable under Section 302 of the Indian Penal Code. No separate punishment was awarded for the other two penal provisions of law.

2. The short facts necessary for the disposal of the appeal can be summarized as follows :

(a) P.W.9 is the second wife of the deceased. The second accused is the first wife of the deceased. Accused-1 is the paramour of accused-2. P.W.8 is the brother of the deceased. P.W.10 is the father of P.W.9. P.Ws.8 to 16 were residents at Vengupattu village. P.Ws.1 to 4 were the residents of Vadamathimangalm vilalge. The first accused had illicit intimacy with the second accused, which came to the knowledge of the deceased and there used to be quarrels between the deceased and the second accused. The illicit intimacy between both the accused was also brought to the notice of the Panchayat President P.W.23 and they were also advised by P.W.23. Accused 1 and 2, in order to, screen the illicit affairs used to stay in Shyamala lodge. According to the evidence of P.W.17, the owner of the lodge and Ex.P.20, the register maintained by him regarding allotment of rooms, the first accused has signed the register, Ex.P.20 on number of occasions.

(b) On 25.03.1992 P.W.11 found both the accused sitting in a bus which was bound to Sholingar. On 27.03.1992 at about 08.30 am P.W.1 the Village Menial of Vadamathimangalam village found the dead body of the deceased near a railway track and he informed P.W.2, the Village Administrative Officer, who visited the scene, saw the dead body and gave a report to P.W.25, the Head Constable

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attached to Kalambur police station. On the strength of that report, Ex.P.6, a case came to be registered in crime No.196/92 for the offence punishable under Section 302 of the Indian Penal Code. Express reports were prepared and sent to Court. Ex.P.7 is the copy of the printed first information report.

(c) P.W.28, who was in charge of the Arani Police station, on receipt of a copy of the report, proceeded to the scene of occurrence at 06.45 pm and made an inspection in the presence of witnesses and panchayatdhars. He prepared an observation mahazar, Ex.P.5 and drew a rough sketch, Ex.P.56 in the presence of P.Ws.1 and 2. He seized blood stained soil and sample soil, M.Os.8 and 9 from the place where the dead body was lying, under a mahazar, Ex.P.4. He also recovered blood stained gravel and sample gravel, M.Os.21 and 22 under a mahazar, Ex.P.58. He recovered a knife, M.O.1 under a mahazar, Ex.P.1. Inquest was conducted on the dead body of the deceased between 08.00 pm and 11.00 pm on that day and Ex.P.57, inquest report was prepared by him. He issued Ex.P.9, requisition to the doctor for conducting postmortem.

(d) On receipt of the requisition, Ex.P.9, P.W.5, the Assistant Surgeon attached to Arani Government Hospital, conducted autopsy on the dead body and found the following injuries :

1. Three incised wound, transverse, on the left side of the middle of neck ½" apart, size ¾" x ¼" x 1 ½". Piercing blood vessels and trachea.
2. Two incised wounds, transverse, in front of the neck 1" x ¼" x 1".
3. An oblique incised wound ¾" x ¼" x 2" in the right side of the chest over the liver.
4. A vertical incised wound in the right flank 3" x ¼" x 1".
5. A vertical incised wound 3" x ¼" x 2" in the right half of the front of the upper abdomen.
6. An oblique incised wound in the centre of the right palm ½" x ¼" x ¼".
7. An oblique incised wound ¾" x ¼" x piercing the abdominal cavity 2" below and latera to the umbilicus about 6" length of loop of small intestine protruding outside the abdomen.
8. A vertical incised wound 3" x ¼" x 1" in the right half of the lower part of back.
9. A vertical incised wound ¾" x ¼" x 1" in the right half of the back 3" below the injury No.8.
10. A vertical incised wound ½" x ¼" x ½" in the lower part of the right half of the back near the vertebral column.

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He issued postmortem certificate, Ex.P.10, wherein he has opined that the deceased died of shock and haemorrhage due to multiple stab injuries and injury to liver, lung, intestine, neck, blood vessels and trachea. The skull of the deceased was preserved since the body was not identified till then.

(e) P.W.28 continued with his investigation. He caused the particulars of the deceased to be published in the newspapers on 28.03.1992. He examined P.Ws.18 and 23 on 29.03.1992. On 30.03.1992 the Head Constable, P.W.25 brought P.Ws.8 to 10 to the police station. P.W.28 took P.Ws.8 to 10 to the Government Hospital and they were shown the skull of the deceased, which they identified as that of the deceased. The skull of the deceased was also shown to P.W.9 and she also identified as that of the deceased. At about 05.00 pm on that day P.W.9 produced Ex.P.12 letter, which was seized under a mahazar, Ex.P.19 attested by P.W.10. On 01.04.1992 the material objects were sent for chemical analysis through Court and the mahazars and other papers were sent to Court.

(f) P.W.29 the Inspector of Police, Arani, who reported to duty after expiry of leave, took up further investigation. Accused 1 and 2 were arrested on 21.04.1992. and when they were examined in the presence of witnesses, they voluntarily gave confession statements. Accused-1, pursuant to the admissible portion of his statement, Ex.P.60 produced a black money purse, M.O.10 belonging to the deceased, which was recovered under a mahazar, Ex.P.8, wherein the photograph of the deceased was found. Pursuant to the admissible portion of the confession statement given by accused-2, Ex.P.59, Ex.P.41 letter was recovered. This recovery was made from inside the house on being produced by her. Based on the statement of the first accused the register of Shyamala lodge, Ex.P.20 was recovered from P.W.17, the owner of the lodge. From there, the accused took P.W.29 to Sholingar and there from the residence of P.W.19, a cycle, M.O.16, which was used by the deceased was recovered under a mahazar, Ex.P.36. The accused were taken to the police station and the specimen handwriting of the first accused, Ex.P.37 was taken in the presence of witnesses. Exs.P.12 and P.41, which were recovered from P.W.9 and the second accused respectively were forwarded to handwriting expert and subjected to verification and on verification they were found to be tallying with the handwriting of the first accused. Ex.P.55 is the report of the handwriting expert. He was examined before the Court as P.W.6.

(g) P.W.26, the Assistant Director of the Forensic Department examined the photographs and the skull forwarded to the lab by the Investigating Officer by using Electronic Skull

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Identification Device and on such examination he found that the face in the photographs and the skull outlines are found to be in good agreement. Ex.P.18 is his report. On completion of the investigation, the Investigating Officer filed the final report on 31.05.1993.

3. In order to substantiate the charges levelled against the appellants/accused, the prosecution examined 29 witnesses and relied on 63 exhibits and 23 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Section 313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, and they flatly denied the same as false. No witness was examined on their side, nor any document was marked. After hearing both sides, the trial Court was of the opinion that the prosecution has proved its case beyond all reasonable doubts and found the accused guilty for the charges levelled against them and awarded sentences as referred to above and this is the subject matter of challenge before this Court in this appeal.

4. Learned senior counsel appearing for the appellants, inter alia, would submit that in the instant case the prosecution had no direct evidence to offer. There is sufficient evidence to show that accused 1 and 2 had illicit relationship, but the circumstances relied on by the prosecution were not sufficient to prove the guilt of the accused.

5. The learned senior counsel would add that in the instant case, the prosecution mainly relied on two circumstances. One is the evidence of P.W.3, who heard the distressing cries of the deceased immediately after the occurrence on 26.03.1992 at 05.00 pm. P.W.3, in his evidence has stated that on hearing the distressing cries, he went and saw the deceased lying on the ground and when he questioned the deceased, the deceased did not utter any word about the accused. Had the accused committed the crime, as alleged by the prosecution, then the deceased would have certainly mentioned so to P.W.3, but it was not so. This would indicate that the occurrence did not take place in the manner put forth by the prosecution.

6. The second circumstance much relied on by the prosecution before the lower Court and accepted by the trial Judge are letters, Exs.P.12 and P.41. Ex.P.12 letter was produced by P.W.9 during investigation and Ex.P.41 was produced by accused-2 pursuant to the confession statement recorded by the Investigating Officer, which were subjected to verification by a handwriting expert. It is pertinent to point out that the handwriting expert has opined that the handwriting in both the letters tally with the

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handwriting of the first accused and both the letters must have been written by the same person. In the instant case, the very reading of the letters would clearly indicate that both the letters must have been written by the deceased, and therefore, it would not certainly connect the accused with the crime and apart from that, the prosecution has relied on the identification of the accused by P.Ws.11, 12 and 14 at the police station, which would show that accused 2 was taken to the police station even as early as on 28.03.1992 and she was detained in the police station and the arrest alleged to have been made by the police on 21.04.1992 and the subsequent confession statement and the recovery of Ex.P.41 would, therefore, have no evidentiary value .

7. Added further the learned counsel for the appellants that in the instant case even one circumstance to connect the accused to the crime has been pointed out by the prosecution and hence the lower court without considering the same has found that the prosecution has proved all the circumstances to connect the accused to the crime.

8. The Court heard the learned Additional Public Prosecutor on the above contentions.

9. The Court paid its full attention on the submissions made, and made a thorough scrutiny of the materials available.

10. It is not in controversy that the deceased who was the husband of accused 2 and P.W.9 died out of homicidal violence and the dead body was subjected to postmortem following an inquest by the Investigating Officer. P.W.5, the doctor, who conducted postmortem on the body of the deceased has issued postmortem certificate, Ex.P.10, wherein he has opined that the deceased died of shock and haemorrhage due to multiple stab injuries and injury to liver, lung, intestine, neck, blood vessels and trachea. The fact that the deceased died of homicidal violence was not questioned by the accused either before the lower Court or before this Court and thus there is no dispute that the deceased died of homicidal violence.

11. In the instant case, the prosecution has no direct evidence to offer and it had to rest its case solely on the circumstantial evidence. It is well settled principle of law that in cases of circumstantial evidence, a duty is cast upon the prosecution to bring forth sufficient circumstances and apart from that to prove those circumstances, make a clear chain of those circumstances so as to indicate that the accused alone committed the offence. In the instant case, the prosecution failed to do so.

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12. The first and the foremost circumstance, which the prosecution failed to prove is the evidence of P.W.3 P.W.3 has stated in his evidence that on hearing the distressing cries, he went and saw the deceased and when he asked the deceased as to what happened, the deceased had told him that somebody has stabbed him and and left him there. The learned senior counsel rightly pointed out that had it been true that accused 1 and 2 were involved in the crime, who were none else, than the wife of the deceased and her paramour, the deceased would certainly have stated that it was the accused who attacked him, but he had not stated so. This would cast a doubt on the case of the prosecution.

13. The next circumstance put forth by the prosecution was the two letters alleged to have been written by the first accused. The two letters were placed before the Court. Ex.P.12, which according to P.W.9, the second wife of the deceased, was written by her husband and the second letter was recovered on the strength of the confession statement given by the second accused, which is marked as Ex.P.41. The evidence of the handwriting expert that both the letters were written by the same person would destroy the case of the prosecution. P.W.9, the wife of the deceased has stated in her evidence that the letter, Ex.P.12 contained the handwriting of her husband and this would clearly show that the other letter should also have been written by the deceased and therefore, it is highly doubtful whether Ex.P.41 could have been recovered by the police agency as put forth by the prosecution from the custody of the second accused. There is ample evidence to show that the second accused was arrested even at the end of March and she was retained in the police station. According to the prosecution version, she was arrested only on 21.04.1992 on which day she voluntarily gave a confession statement, based on which, letter Ex.P.41 was recovered from the back side of her house. If that be so, the alleged arrest, the confessional statement and the consequential recovery of the letter, Ex.P.41, have got to be rejected as one which were created by the prosecution. If the recovery of Ex.P.41 cannot be believed, then the Court necessarily has to reject the other part of the evidence and no evidentiary value can be attached to Ex.P.41 or to Ex.P.12.

14. In the absence of these two strong circumstances, all other circumstances placed before the Court were all speaking to the illicit intimacy of accused 1 and 2. It is never disputed that accused -1 and accused -2 had illicit intimacy and it has been spoken to by P.W.17, the owner of Shymala Lodge who produced a register, wherein the first accused had signed on so many occasion and had stayed with the second accused in the lodge, but that would not in anyway show the nexus of the accused with the crime. It is true that the prosecution has brought forth to the

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notice of the Court strong suspicion against both the accused, but the settled principles of law is that any amount of suspicion will not be a clear proof. In the instant case, the circumstances, which were placed before the Court, according to the prosecution, though were sufficient to connect the accused to the crime, in the opinion of the Court, those circumstances are neither sufficient nor capable of connecting the accused with the crime.

15. Under the circumstances, the Court has to necessarily reject the contention of the counsel for the State and the reasons given by the trial Court, as the trial Court has not properly appreciated the case in proper perspective, but has been carried away by the illicit intimacy of the accused and on the evidence let in before the Court, has found them guilty, which in the opinion of the Court, is perverse. Therefore, the judgment of the lower Court has got to be undone only by upsetting the judgment and we accordingly do so. The conviction and sentence imposed on the appellants are set aside and the appellants are acquitted of all the charges. The criminal appeal is allowed.

The bail bonds executed by the appellants shall stand cancelled.

21.07.2005

mf

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copies to

1.The Additional Sessions Judge, Thiruvannamalai
2.The Additional Sessions Judge, Thiruvannamalai through the Principal Sessions Judge, Thiruvannamalai.
3. The Judicial Magistrate, Arni.
4. The Judicial Magistrate, Cheyyaru
5. -do- Through The Chief Judicial Magistrate, Tiruvannamai.
6.The District Collector, Thiruvannamalai.
7.The Director General of Police, Chennai.
8.The Public Prosecutor, High Court, Madras
9.The Superintendent, Central Prison, Vellore.
10. The Superintendent, Women's Prison, Vellore.
11.The Inspector of Police, Kalambur Police Station.
1 cc to Mr.K.Selvarangan, Advocate, SR.30023
mab (co)
dv/29.7. Crl.A.No.424 of 1999

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